IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1500 of 2005

Baby Devassy Chully @
Bobby .. Petitioner
(Detenu)

V/s

1. The Union of India
2. R.K.Gupta,
Joint Secretary to the
Government of India,
Ministry of Finance, New Delhi
3. The Superintendent of Prison,
Mumbai Central, Mumbai
4. The State of Maharashtra ... Respondents

Shri Maqsood Khan i/b Yogesh
Rohira for Petitioner
Smt.A.S.Pai for Respondent nos.1 and 2
Shri D.S.Mhaispurkar, A.P.P. for Respondent nos.3 and 4'

CORAM:S.B.MHASE,J.
& S.R.SATHE,JJ.
DATED: 16th March 2006

ORAL JUDGMENT : (Per S.R.SATHE,J.)

1. By this petition under Article 226 of the Constitution of India, the Petitioner-detenu has taken an exception to the order of detention passed against him by the Joint Secretary to the Government of India i.e. Respondent no.2 on 3-5-2005 in exercise of the powers conferred by section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the COFEPOSA Act).

2. Brief facts giving rise to this petition are as under :

. The Directorate of Revenue Intelligence (hereafter referred to as DRI) received intelligence that one sea faring vessel by name M.T. AL SHAHABA (a motor tanker) carrying approximately 700 metric tons (MT) of Diesel Oil of foreign origin is arriving on or around 20th or 21st December 2004 and the said diesel oil would be smuggled into India. The officers of the DRI Mumbai therefore kept surveillance in that area. On 21-12-2004 the officers spotted the vessel M.T.AL Shahaba. It was also noticed that two self propelled barges and two dumb barges each towed by a tow boat, were around the said ship. The officers noticed that pipes were attached from the said vessel to the barges and the oil was being

pumped into the barges from the vessel. The vessel and barges were of Mumbai coast within the Indian territorial waters. When the officers made enquiry with the captain of vessel Fouad Ahmed Al Manie, he informed that vessel was carrying High Speed Diesel (HSD). The captain was not holding any legal documents for important of the said diesel oil into India. The officers therefore brought the said vessel and barges to the P and V Anchorage of Port Trust, Mumbai. Two independent panchas were brought and search of the said vessel and barges was taken and panchanamas were drawn. The captain informed the officers that he has already discharged around 250 MTS of the oil from the vessel into three barges before the officers boarded the vessel. The officers of DRI therefore seized the said diesel oil weighing about 770 MTS, worth Rs.2 crores, under the Customs Act, 1962.

3. During further enquiry the officers came to know the names of the Petitioner detenu and one Chand as the persons behind the said smuggling. In his statement recorded under Section 108 of the Customs Act, 1962 the captain of vessel told the officers that he was asked by his master to take the vessel to Indian coast and then contact the Petitioner detenu who was commonly known as Bobby. Captain was only given the mobile number of the Petitioner and no full name and address was given. Usually the diesel oil is discharged in the port but

master had told the captain to anchor the ship 15-16 miles from the coast, and discharge the diesel oil into the barges which would be coming by the side of the vessel.

4. The officers recorded the statement of Sayyed Hussian Madar alias Chand on 23-12-2004 and he also told them that he used to purchase the oil from such vessels and sell it on Rethi Bunder near Darukhana and no custom duty was paid by him. When he came in contact with Bobby i.e. Petitioner, many times he (Petitioner) suggested him that he (Petitioner) had contacts at Oman, U.A.E. and would bring HSD from Oman and he (Chand) can sell the same. It was also told that in this he would be getting profit margin by 25 to 30%. Thus, accordingly in September 2003 he (Chand) had discharged HSD at BFL tanker anchorage. The said consignment was purchased by Chand from Bobby at the rate of Rs.15/- per litre and sold it at Rs.21/- per litre. Similar activities were carried out by them in the month of March 2004. On 16-12-2004 Bobby had told him (Chand) that vessel has left Oman carrying about 770 MTS of HSD and also gave instructions to station the vessel few miles away from Mumbai Port and he (Chand) was asked to make arrangement of barges to unload the HSD from vessel. On 20-12-2004 the Petitioner told him Chand that vessel would be arriving during the night of 20-12-2004.

5. During the course of follow up action of the said seizure of vessel, officers of DRI arrested Chand, Capt. Fouad Ahmed, and 2/3 other persons under Section 104 of Customs Act, 1962 on 23-12-2004. Initially judicial custody was granted to them and finally bail was granted to them. However, subsequently Chand,Capt. Found ahmed and Sardinian B. Khan retracted their statements. During all this period though the officers searched the residence of Petitioner at Dombivili, District Thane, he was not traced. However,he was finally traced on 14-3-2005. The Petitioner moved anticipatory bail application in Sessions court, Mumbai but the same was rejected. The Petitioner then appeared at DRI office on 24-3-2005 and his statement was recorded under Section 108 of Customs Act wherein he narrated the same facts which were told by Chand. He also disclosed as to how he had asked Chand to take delivery of HSD in barges and sale it and how he received the margin money in the same. On the basis of the statements recorded and other information collected, the officers arrested the Petitioner on 25-3-2005. He was granted judicial custody till 12-4-2005. On that day bail was granted to him, however, he did not avail the bail.

6. When all these facts along with all necessary material were placed before the Joint Secretary to the Government of India, i.e. Respondent no.2 he was

subjectively satisfied that goods i.e. HSD was smuggled as defined in Section 2(39) of the Customs Act, 1962 and Section 2(e) of COFEFOSA Act 1974 and activities of the Petitioner were amounting to abetting the smuggling of goods which were liable for confiscation under Section 111(d) of the Customs Act 1962. Considering Petitioner's high propensity and potentiality to indulge in such prejudicial activities, the Respondent no.2 thought it necessary to detain the Petitioner under Section 3(i)(ii) of COFEPOSA Act with a view to prevent him from abetting smuggling of goods in future. He, therefore, accordingly issued the detention order and the same was served on the Petitioner detenu on 3-5-2005 along with the grounds of detention and other relevant documents. The Petitioner was also informed as to how he can make representation etc..

7. Being aggrieved by the said order the Petitioner filed the present writ petition and challenged the order of detention on various grounds. The first and main ground of challenge is that the order has been passed by the detaining authority without any application of mind. The detaining authority without going through the material placed before it formulated the grounds of detention merely in terms of report placed before the authority. According to the Petitioner on the basis of material placed before the detaining authority at the most order of detention for smuggling of goods could

have been passed but not order for abetting the smuggling of goods. In short, according to the Petitioner, the material disclosed the smuggling of goods by the Petitioner and not abetting smuggling of goods.

8. In order to find out whether there is any substance in this objection raised by the Petitioner and the argument advanced by the learned Advocate Mr.Maqood Khan for the Petitioner, in this behalf, it would be worthwhile first to see the relevant legal provisions. Section 3(i) and 3(ii) of the COFEPOSA Act.

Section 3(i) and (ii) read as under :

> 3. Power to make orders detaining certain persons - (1) The Central Government or the State Government or any officer of the Central Government, not below the rank of Joint Secretary to that Government specially empowered for the purposes of this section by that Government or any officer of a State Government, not below the rank of a secretary to that Government, specially empowered for the purposes of this section by that Government may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing

him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from -

(i) smuggling goods, or
(ii) abetting the smuggling of goods, or

. Section 2(39) of Customs Act reads as under:

2(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

. Section 2(e) of COFEPOSA Act reads as under :

2(e) "smuggling" has the same meaning as in clause (39) of Section 2 of the Customs Act, 1962 (52 of 1962), and all its grammatical variations and cognate expressions shall be construed accordingly.

9. As the word abetting is not defined in COFEPOSA Act 1974, we have to see the definition of the said word given in Section 107 of the Indian Penal Code as it applies to all Central Acts. Section 107 of IPC reads

as under :

> 107. Abatement of a thing - a person abets the doing of a thing, who -
>
> First - Instigates any person to do that thing, or
>
> Secondly, Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

. Section 111 of Customs Act reads as under :

> 111. Confiscation of improperly imported goods, etc The following goods brought from a place outside India shall be liable to confiscation -
>
> (a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or

customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force.

10. Smuggling is nothing but an import of goods secretly or candesntly without payment of duty. As per Section 2(39) of the Customs Act smuggling in relation to any goods means any act or omission which will render such goods liable to confiscation under Section 111 or 113 of Customs Act. In the instant case the most

important thing which has to be noted is that the Petitioner has not challenged the act of confiscation of HSD in question. Initially, a feeble attempt was made on behalf of the Petitioner to show that HSD in question had in fact not arrived in the territorial sea limit of India and as such it cannot be said that goods were smuggled. But it is needless to say that Indian Customs Waters covers not only Indian Costal waters but much more extending 24 nautical miles from the costal base line as held in Hawabi Sayyad Vs Himangi **1993 SCC 305**. Having regard to the statements of various persons mentioned above as well as report of DRI it is very clear that goods were within territorial water limits of Indian sea. In fact that is why the said point has not been stressed much. So far as other facts of the case are concerned the same are practically not challenged.

11. The main and the material question which has to be decided in this case is whether the activities that were carried out by the Petitioner detenu can be termed as ‘abetting the smuggling’ or whether the same actually amount to ‘smuggling’. While considering this aspect it must be borne in mind that according to Section 107 of IPC the person abets doing of a thing when , i) he instigates any person to do that thing, or ii) engages with one or more other persons or persons in conspiracy for doing of that thing or iii) intentionally aids of any act or illegal action, doing that thing.

12. Having once made it clear as to what amounts to ‘abetting a thing’, let us scan the material on record, to see as to what activities were carried out by the Petitioner detenu. For this purpose, mainly we have to take into consideration the statement of Chand recorded by the officers of DRI under Section 108 of Customs Act. Syed Hussein Madar @ Chand has stated in his statement dated 23-12-2004 that he was doing business of HSD and he used to purchase the same from ships berthed at mid sea. Some of the ships at times discharged about 10/20 MTs of HSD from the vessels and was sold at Rati Bunder near Darukhana and no custom duty was paid on the same. He also made a statement that about one and half years back he came in contact with Petitioner (Bobby) and Petitioner then came to know that he (Chand) used to buy HSD from ship and used to sell the same at Haji Bunder. Petitioner also came to know that he (Chand) had contacts with barges’ owners. The Petitioner, therefore suggested him on several occasions that as the Petitioner was having contacts at Oman, he would bring HSD from Omen and Chand would sell the same. He also told the officers that the Petitioner told him that he would make all arrangement of hiring motor tanker at Oman and bring the same within few miles from Mumbai port and that there would be good margin profit and therefore he agreed to purchase HSD from the Petitioner and accordingly first consignment arrived in September

2003 and HSD was discharged at BPL Tanker anchorage about 15 miles away from Mumbai port and thereafter carried into 3 barges. Similarly there was another consignment which was handled by Chand in similar manner in March 2000 and for consignment in question also Petitioner (Bobby) had given necessary instructions to the ship owner at Oman and Chand was asked to make arrangement of barges to unload HSD from vessel. Even in the morning of 20-12-2004 Petitioner told him that about 750 Mts HSD has been loaded in vessel M.T.Al Shahaba and it would arrive during night of 20-12-2004 and accordingly Chand made arrangement of 2 self barges and 2 dumb barges and ultimately said HSD was discharged in barges and subsequently it was noticed by the officers of DRI. From the above mentioned statement of Chand it is quite evident that the Pensioner met Chand and he instigated or induced Chand to purchase and sell HSD brought from Oman in the said manner. It was the Petitioner who laid the plan as to how the goods can be brought and how the same can be discharged in the different burges arranged by Chand. Petitioner had told Chand that he was having contacts at Oman UAE and using those contacts he will arrange to send the HSD through vessel from UAE and Chand to receive the same in Indian sea. So, it is very clear that these acts of Petitioner in fact amount to instigating Chand to smuggle the HSD in particular manner. Merely because in the process of bringing HSD, at some stages the Petitioner was to take

part and make necessary arrangement by using his contacts, one cannot jump to the conclusion that he was not abetting smuggling or that he was not engaged with Chand and others in conspiracy for carrying out smuggling with a view to have the margin in purchase and sell of HSD. The Petitioner intentionally instigated Chand and others t take certain steps for smuggling HSD. So these acts of Petitioner certainly amount to abatement of smuggling.

13. From the perusal of the grounds of detention, copy of which was given to the Petitioner, it reveals that detaining authority had also taken into consideration the statement of Fouad Ahmad Al Manie, captain of MT AL Shahaba, wherein he has stated that his master asked him to take the cargo to Indian coast and then to contact Bobby and Bobby’s mobile number was given to him. He was also instructed to give report of sending the cargo to the Petitioner and when his master asked him to anchor the vessel 15-16 miles from the coast, the captain expressed that it would not be proper and legal and on that he was told that Bobby i.e. Petitioner would manage everything. Accordingly, when the vessel; reached at a distance of about 14/15 miles from Indian coast, the captain contacted the Petitioner on his mobile and as per Petitioner’s instructions when the vessel was at a distance of about 16 miles from the coast, Chand along with others contacted the captain and

then the captain discharged 257 MT HSD to Chand's barges. So, from this statement also it is very clear that the delivery of HDS was actually taken by Chand and not by Bobby. So, as a result of the same also the detaining authority felt that smuggling took place at the instigation and abatement made by the Petitioner to Chand.

14. Apart from the above mentioned material the Petitioner himself had given a statement under Section 108 of Customs Act, 1962 wherein also he had said that taking into consideration his contacts in Oman and UAE with several people including vessel suppliers he suggested to Chand to smuggle diesel sent from Oman and UAE and sell the same at Mumbai. Not only that but in his statement the Petitioner had stated that Mohammad Al Majali of International Shipping Agencies in Oman had informed him that they would supply diesel off Mumbai at the rate of Rs.13.50 per litre and so he told Chand that he would sell the same to Chand at the rate of Rs.15/- per litre. The Petitioner was to make arrangement for motor tanker at Oman while Chand was to make arrangements of barges for receiving and carrying HDS from vessel in India. So, from this statement also the detaining authority came to know that it was the Petitioner who instigated or induced Chand to enter into such transaction and as a result of the same Chand agreed and accordingly took part in the said activities

and ultimately even took the delivery of HDS and then sold the same. Petitioner did not take the delivery of HSD. So, this material was also sufficient for the detaining authority to come to the conclusion that the Petitioner was indulging in abetting smuggling of goods. Besides this, there were statements of owners of barges/tank boats which were used for bringing HDS from vessel. They had also said that the rent of the said berges was paid by Chand. So, we have no hesitation to hold that activities that were carried out by the Petitioner were in the nature of abetting smuggling. So, the detaining authority has rightly held that in order to curb the said activities of the Petitioner, it is necessary to detain him.

15. It is true that there is difference between carrying out the activity of smuggling and carrying out activity of abetting smuggling. But we also cannot ignore the fact that some times the activities are over lapping. In such a case the person can be detained under both i.e. clause (i) and (ii) of Section 3(i) of COFEPOSA Act as observed by the Apex court in Narendra V. B.B.Gujral **AIR 1979 SC 420**. This view has be reiterated in a case, Meena Thakur V/s Union of India **1995 Cr.L.J. 2533**. Besides this what ultimately one has to see is whether the discrepancy, if any, in the ground of detention and order of detention has actually hampered the right of detenu in making an effective

representation against the order of detention. In the instant case all relevant material documents were provided to the Petitioner. There is in fact no serious challenge to the factual aspect. So, under such circumstances we are of the view that if at all there is any discrepancy in order of detention and grounds of detention, in the facts and circumstances of this case it has not hampered petitioner's rights and the order in question cannot be set aside. In the instant case even if we assume for the sake of argument that some of the activities of the Petitioner in fact amount to smuggling still it must be noted that this is not a case where entire process has been carried out only by the Petitioner. On the contrary several persons have taken part in this process of smuggling. So, for as the part played by Chand is concerned it amounts to smuggling of goods and it is definitely aided and abated by the Petitioner. So, there is no substance in the argument advanced by the learned Advocate for the Petitioner that impugned order ought to have been passed against the Petitioner for smuggling of goods and not for abetting the smuggling of goods. It appears that with a view to take advantage of some technicalities and some of the rulings, Petitioner has taken a stand that activities alleged to have been carried out by the Petitioner amount to smuggling and not to abatement of smuggling and as such grounds of detention given by the detaining authority do not justify the final order of detention

for the purpose of restraining the Petitioner from carrying out activities of abetting smuggling. According to the learned Advocate for the Petitioner it shows non application of mind on the part of the detaining authority and therefore the order of detention deserves to be quashed. In order to substantiate this proposition the learned Advocate for the Petitioner has drawn our attention to a case **Hajarimal Jain v/s State of Maharashtra Criminal Writ Petition No.329 of 1984** decided by this Court. After perusal of the said judgment it is very clear that the facts of the said case and the facts of the case in hand are quite different. In that case the detaining authority had not come to any definite conclusion as to whether the detenu was dealing in smuggling goods or keeping such goods or was abetting smuggling. Even then the order of detention was passed to prevent the detenu from abetting on smuggling of goods and hence it was held that there was no nexus between the grounds of detention and for the purpose for which the detention order was passed. There was no material before the detaining authority to justify the conclusion that detenu in that case was abetting smuggling of goods. So, under such peculiar circumstances the order of detention was set aside. However, as already pointed out above, in the instant case there is ample cogent material to show that it was the Petitioner who instigated and induced the other persons, mainly Chand to do certain acts and smuggle the

goods. It was he who asked Chand to smuggle goods and sell it at Mumbai. Admittedly, there is nothing on record to indicate that finance was supplied by the Petitioner. On the contrary it was given by one Sabruddin. So, the detaining authority rightly observed in the grounds of detention that activities of the present petitioner were amounting to abetting the smuggling of goods. So, the ratio of the above cited case is not at all applicable to the facts of the present case.

16. The learned Advocate for the Petitioner has also placed reliance on a case **S.S.Chaudhary V/s State of Maharashtra and Ors. Criminal Writ Petition No.2318 of 2004** to show that in that case the order of detention was passed with a view to restrain the detenu from indulging in activities of abetting the smuggling, however, this Court quashed and set aside the order holding that activities indulged in by the said detenu were of smuggling of goods. It is very clear from the perusal of the judgment that even the detaining authority had observed that detenu was involved in smuggling goods. Besides this, after scrutinising the facts, this court had come to the conclusion that alleged acts were acts of smuggling and not the acts of abatement of smuggling. So, naturally the order of detention was set aside. However, in the instant case we have already come to the conclusion that there is

enough material to show that activities of the Petitioner in question amount to abating the smuggling and the detaining authority has also specifically held accordingly. So, above stated case is of no use of the Petitioner.

17. The learned Advocate for the Petitioner argued before us that the detaining authority in fact did not apply its mind and bodily lifted the material placed before it by the sponsoring authority and passed the order and as such the order is bad in law. In order to substantiate this proposition he has placed reliance on a case **1964 AIR (SC) 550**. However, the facts of the above mentioned case and the facts of the present case are different. Here there is nothing to indicate that detaining authority has in fact not independently considered the material placed before it. Nor it can be said that there was mechanical reaction without conscious application of mind on the part of the detaining authority. We are therefore of the view that there is no substance in the first ground of challenge raised by the Petitioner.

18. The next ground of challenge is that detaining authority only relied on the statement of retraction of Sayyad Hussain Madar @ Chand dated 6-1-2005 which is very cryptic but the counter affidavit filed by the said Chand in Criminal Writ Petition No.740 of 2005 filed by

Sadruddin Khan in this Court was not considered. According to the Petitioner the retraction in the counter affidavit was sufficient to show the high handedness of DRI officers. So, the said affidavit and counter affidavits in Criminal Writ Petition were vital documents and as such the same should have been placed before the detaining authority. But as the same were not placed, the order of detention cannot be justified. In order to substantiate this proposition the learned Advocate for the Petitioner detenu has laid his hands on a case Ayya @ Ayub V/s State of U.P. **AIR 1989 SC 364** wherein Their Lordships have observed that if a piece of evidence which was relevant though not binding, had not been considered at all the order of detention vitiates on non application of mind. The proposition in this ruling is not disputed and cannot be disputed. However, under the peculiar circumstance of that case it was held that telegram in question ought to have been produced before the detaining authority.However, here it must be noted that writ petition referred to above was filed by Sadruddin in which counter affidavit of Chand was filed. However, that was mainly in respect of matter between Chand and Sabruddin. It has nothing to do with the present Petitioner and was not vital for issuing the order of detention against the detenu. In fact if we see the grounds of detention then it is clear that detaining authority has not at relied upon the material pertaining to Criminal Writ Petition NO.740 of 2005

though the said material was placed before him, as the said material was not at all vital for issuing the order of detention of the present petitioner. So this is not a case of failure on the part of detaining authority to consider a document. Of course, we do find that there is passing reference of the material in Criminal Writ Petition No.740 of 2005 but there is nothing on record to show that the said material was vital. Nor the learned Advocate for the Petitioner could point out as to how the said material would have influenced the detaining authority while passing the order in question. While considering this question useful reference can be made to a case cited by the learned A.P.P. In Madanlal Anand V/s Union of India **(1990) 1 SCC 81** wherein it is observed "it is true that documents having bearing on subjective satisfaction of detaining authority must be placed before it but if documents are such that even in their absence subjective satisfaction would not be affected then failure to place documents before detaining authority would be immaterial". So there is no substance in the argument advanced by the learned advocate for petitioner in this behalf.

19. The learned Advocate for the Petitioner submitted that detaining authority has to take into consideration all material and vital documents and from that point of view they ought to have considered the affidavit and counter affidavit etc. filed in Criminal Writ Petition

No.740 of 2005. According to him, non consideration of any vital fact vitiates the order of detention. For this proposition he has placed reliance on a case K.Varadraj V/s State of Tamilnadu **(2002) 6 SCC 735**. From the perusal of the said judgment it appears that in that case the detenu had filed an application for bail and at the time of hearing of the said application on behalf of State it was submitted that State has no objection to grant bail. According to the Apex Court that was vital fact of which note ought to have been taken by the detaining authority. However, in the instant case when there is no sufficient material to show as to how a particular document was vital and the same was not considered by the detaining authority, we cannot say that there is any infirmity in the order in question. So, we are of the view that there is no substance in the argument advanced on behalf of the Petitioner in this behalf.

20. The learned Advocate for the Petitioner has also cited many other authorities on this point. However, in all these authorities particular document was held to be vital and as such non consideration of the same or not giving copy of the same to the detenu was considered to be fatal. At the cost of repetition it must be mentioned that in the instant case the learned Advocate for the Petitioner has not pointed out as to how a particular document out of Writ Petition No.740 of 2005

was vital or how it would have changed the finding of the detaining authority.

21. The third ground on which the order in question is challenged is that just as the detaining authority recorded the reasons for rejecting the retraction of the Petitioner they should have given reasons for rejecting the statement of retraction of Sayyad Hussain @ Chand and it indicates non application of mind. While considering this aspect it must be mentioned that detaining authority considered the said retraction but it being of co-conspirator, according to authority the same was not vital for issue of order of detention against the Petitioner who had aided and abetted the commission of smuggling. The detaining authority therefore did not place reliance on the said retractions and hence the copy of the same was not provided to the detenu. So, according to the detaining authority non supply of copy of the retraction of the co-conspirator would not make any difference and would certainly not vitiate the detention order. We also feel that non supply of copy of retraction cannot be considered to be material lacuna, so as to come to the conclusion that it has any way affected the valuable right of the detenu to make representation under Article 22(5) of Constitution of India. So, there is no substance in arguments advanced by the learned Advocate for the Petitioner in this behalf.

22. It was argued on behalf of the Petitioner that in the grounds of detention it has been mentioned that detaining authority has taken into consideration the retractions of the Petitioner. However, there is only one retraction and this also indicates non application of mind. In our opinion, it is simple inadvertent mistake in respect of mentioning retraction, it is wrongly mentioned in plural. From this we cannot jump to the conclusion that there was non application of mind on the part of the detaining authority particularly when we find that detaining authority has taken into consideration all relevant material and scanned the same properly. So, we are not inclined to accept the submission made by the learned Advocate for the Petitioner in this behalf.

23. Lastly the learned Advocate for the Petitioner submitted that the Petitioner was supplied with the copy of retraction dated 3-1-2005 of Sadruddin B. Khan but he was not furnished with the copy of statement of Sadruddin and that also violated the rights of the Petitioner under Article 22(5) of the Constitution of India. the learned Advocate for the Petitioner however could not point out as to how the statement of Sadruddin can be said to be vital document and how non supply of the copy of his statement has affected his rights. It is in fact well settled that detaining authority is

under an obligation to provide all material that is referred and relied upon by the detaining authority while passing the detention order. For this proposition useful reference can be made to a case Kamrunissa V/s Union of India **AIR 1991 SC 1440**. So, under such circumstances the explanation given by the detaining authority in affidavit in reply cannot be said to be totally irrelevant when they state that the said statement was not in respect of transaction between Sadruddin and the detenu and as such the same was not provide to him.

24. Thus we find that material that was placed before the detaining authority was certainly sufficient to arrive at the conclusion that the Petitioner was indulging in activities of abetting smuggling HSD. What is more to be noted is that even in the written argument the learned Advocate for the Petitioner has submitted that the Petitioner has contended that on the basis of the material placed before the detaining authority, the detaining authority could have passed the impugned order of detention for smuggling of goods and not for abetting the smuggling of goods. So, this also indicates that even according to the petitioner the material was certainly sufficient to show participation of the detenu in the smuggling activity. So, one thing is certain that whatever acts were disclosed from the material that was placed before the detaining authority the same

warranted the order of detention. Be it smuggling of goods and/or abetting smuggling of goods. Ultimately what is material is the basic act indulged in by the detenu and not the label or nomenclature attached to the said act. So, even if there is any discrepancy in the order of detention and the grounds of detention in respect of nomenclature of the Act in question, it has not affected right of detenu to make effective representation. In fact we have already specifically observed that in the instant case the activities of the Petitioner clearly indicated that he was abetting the smuggling and as such the detaining authority rightly issued the detention order. In fact in the case of State of U.P. V/s Harising Thakur **1988 SCC (CR) 44** Their lordships have observed that validity of detention order should be judged by an object of striking balance between need to protect the community and need to preserve liberty of a citizen having regard to all relevant circumstances and considerations.

25. In this view of the matter, we are of the opinion that detention order passed by the Respondent no.2 on 3-5-2005 is legal and correct. There is absolutely no necessity to interfere with the said order while exercising the powers under Article 226 of the Constitution of India. Thus there is no substance in this petition. Hence the petition is dismissed. The rule is discharged.

(S.R. SATHE,J.) (S.B.MHASE, J)